

SEC. ____ . PILOT PROGRAM TO AUTHORIZE SELECTED TEST AND
EVALUATION CENTERS OF THE DEPARTMENT OF DEFENSE
TO BECOME MEMBERS OF LIMITED LIABILITY COMPANIES.

(a) AUTHORITY FOR PILOT PROGRAM.—During the period provided in subsection (e), the Secretary of Defense may conduct a pilot program to authorize the director of any test and evaluation center described in subsection (b) to establish and participate as a member of a limited liability company organized under the laws of any state or the District of Columbia for the purpose of performing test and evaluation functions with other members of the company and facilitating research and development and related testing and training functions of a military department.

(b) LABORATORIES AND CENTERS.—A center that may be authorized by the Secretary to establish and participate as a member of a limited liability company under subsection (a) is a test and evaluation center selected by the Secretary to carry out a pilot program under section 246 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (Public Law 105-261).

(c) MEMBERS.—Members of a limited liability company established under this section may include universities or other academic institutions, corporations, limited liability companies, partnerships, joint ventures, Federal and state agencies and departments otherwise authorized to join such a company, and any other legal entity.

(d) STATUS.—A limited liability company established under this section shall not for any purpose be an agency or instrumentality of the Federal Government and, except as provided in subsection (j), shall be required to comply only with those Federal laws and

regulations and Executive orders that apply generally to private limited liability companies. Such company shall be subject to the provisions of this section and, to the extent not inconsistent with this section, the laws relating to limited liability companies under which the company was organized.

(e) PERIOD OF PILOT PROGRAM.—The Secretary of Defense may carry out a pilot program authorized in subsection (a) during the five-year period beginning on the date of enactment of this Act and may extend the pilot program for an additional period not to exceed five years beginning immediately after the expiration of the first five-year period of the pilot program.

(f) BOARD OF MEMBERS.—(1) A limited liability company established under this section shall be managed, controlled, and operated by a board of members.

(2) The director of a test and evaluation center that establishes and participates in a limited liability company under this section shall be the representative of the center on the board of members and shall serve as president of the board of members.

(3) Each of the other members of the limited liability company shall appoint a representative to the board of members.

(g) OPERATING AGREEMENT.—(1) The board of members for a limited liability company under this section shall agree in writing to an operating agreement to establish the manner in which the company shall be managed, controlled, and operated.

(2) Such operating agreement shall require a strict accounting of all funds provided to the limited liability company from a member and strict accountability for all other assets and items that may be provided by a member to or for the use of the company.

(h) Executive Director.—A limited liability company established under this section

shall have an executive director responsible for the daily operations of the company with such specific duties and responsibilities as the board of members may prescribe. The executive director (who shall not be an employee of the Federal Government or member of the armed forces) shall be appointed by the board of members with the approval of the Secretary of Defense.

(i) DETAIL OF EMPLOYEES.—(1) An employee of a test and evaluation center participating in a limited liability company under this section may be assigned on detail to the company, or another member of the company, to work on a project undertaken by the company.

(2) An employee assigned on detail under paragraph (1) remains an employee of the center and shall be deemed, during the assignment, to be on detail to a regular work assignment in the test and evaluation center in the same manner as a Federal employee assigned to a State or local government under section 3373 of title 5, United States Code, including the application of the Federal Tort Claim Act and any other Federal tort liability statute and the supervision of duties. As provided in section 3373, the assignment may be made with or without reimbursement for the travel and transportation expenses and for the pay of the employee during the assignment. Any reimbursements to a military department for such expenses and pay shall be credited to the appropriation of the test and evaluation center used for paying travel and transportation expenses or pay. Any reimbursement under this subsection shall not be a violation of section 209 of title 18, United States Code.

(3) Any costs incurred by a test and evaluation center for an assignment under this subsection not reimbursed by a limited liability company or other member of such

company shall be considered the costs of services rendered to the company and a capital contribution to the company.

(j) ETHICAL REQUIREMENTS.—(1) Any employee of the Federal Government or any member of the armed forces who serves as the representative of a test and evaluation center on a board of members of a limited liability company established under this section, or while assigned to such company or to a member of such company under subsection (i) performs any function in support of such company or member, shall remain an employee of the Federal Government or member of the armed forces, as the case may be, while so serving or performing such function and shall be subject to the Ethics in Government Act (5 U.S.C. Appendix 4), Executive Order 12674, the Department of Defense Joint Ethics Regulation, and all other Federal laws and regulations concerning ethical requirements, standards of conduct, and conflicts of interest that are applicable to an officer or employee of the Federal Government or member of the armed forces.

(2) The participation of an employee of the Federal Government or a member of the armed forces in a limited liability company under this section as a representative of a test and evaluation center on a board of members for such company, or while assigned to such company or member of such company under subsection (i), shall not solely by reason of such participation constitute a violation of section 208 of title 18, United States Code.

(k) WITHDRAWAL.—The Secretary may direct any test and evaluation center that is participating in a limited liability company under this section to withdraw from such company. Such withdrawal shall be effective on a date determined by the Secretary.

The terms for such withdrawal shall be determined by the operating agreement for the company.

(l) **SOLE SOURCE ACQUISITION.**—(1) A Member of a limited liability company established under this section may acquire supplies and services from other members of the company on a sole source basis without full and open competition if the supplies and services are necessary to perform a function of the member in support of the company.

(2) If a military department or other Department of Defense entity requests supplies or services from a test and evaluation center participating in a limited liability company under this section and the center is unable to provide such supplies or services, the department or entity may acquire the supplies or services from the limited liability company in which the center is participating on a sole source basis without full and open competition.

(m) **CAPITAL CONTRIBUTION.**—(1) Such funds as are necessary to contribute capital to a limited liability company established under this section are authorized to be appropriated to a test and evaluation center participating in such company.

(2) The capital contribution of a member to a limited liability company established under this section may be in cash, property, services rendered, or other binding obligation to contribute cash or property or to perform services.

(n) **DISTRIBUTION OF FUNDS.**—Any funds distributed by a limited liability company to a test and evaluation center participating in the company under this section shall be credited to research, development, test and evaluation accounts of the test and evaluation center and shall be merged with and be available for same purposes of the

accounts. Such funds shall be available until expended.

(o) ACCOUNTABILITY AND OVERSIGHT.—(1) The records of a limited liability company established under this section shall be available to the Secretary.

(2) For the purposes of sections 4(a)(1) and 6(a)(1) of the Inspector General Act of 1978 (Public Law 95-452), the programs and operations of such a company shall be considered to be programs and operations of the Department of Defense with respect to which the Inspector General of the Department has responsibilities under such Act.

(3) The inspector general of a military department shall have the same authority as the Inspector General of the Department of Defense under paragraph (2) with respect to a company established and organized to support such military department.

(4) Such company shall be considered an agency for the purposes of section 716 of title 31 (relating to availability of information and inspection of records by the Comptroller General).

(p) REPORTS.—(1) Each limited liability company established under this section shall submit to the Secretary a report after each year in which the company is operating. The report shall include a detailed statement of its operations, activities, and accomplishments during the year. A company with revenues in excess of \$500,000 for any year shall obtain an independent audit of the company for that year. A company with annual revenues between \$10,000 and \$500,000 shall obtain an independent audit of the company at least once every three years. The company shall include the most recent audit in the company's report to the Secretary for that year.

(2) The Secretary shall submit to the Committees on Armed Services of the Senate and House of Representatives an annual report on the limited liability

companies established under this section. The report shall set forth the following information:

(A) The location of each company.

(B) The amount received by each company during the previous year, including—

(i) the total amount received;

(ii) the amount received from governmental entities for research, development, testing and training;

(iii) the amount received from all other sources for research, development, testing and training; and

(iv) if the amount received from a source referred to in clause (iii) exceeded \$100,000, information that identifies the source.

(C) The amount expended by each company during the year including—

(i) the amount expended for salary and travel for research and development staff and the amount expended for salary and travel for support and administrative staff;

(ii) the amount expended for direct support of research and development; and

(iii) if the amount expended with respect to any payee exceeded \$100,000, information that identifies the payee.

(3) Promptly after the expiration of the period for the pilot program under this section, the Secretary shall submit to the Committees on Armed Services of the Senate and House of Representatives a report evaluating the pilot program and

recommending whether the authority to establish and participate in limited liability companies to perform test and evaluation functions and facilitate research and development and related testing and training functions should be made permanent.

(q) DEFINITIONS.—In this section:

(1) The term "limited liability company" means a form of unincorporated organization that is a legal entity distinct from its members and whose members are not—

(A) liable for the debts, obligations, and liabilities of the limited liability company, whether arising in contract, tort or otherwise, solely by reason of being a member of the limited liability company; or

(B) proper parties to suits against the company unless an object of the proceeding is to enforce a member's right against the company or to enforce the member's liability to the company.

(2) The term "employee" has the meaning given the term in section 2105 of title 5, United States Code.

(3) The terms "supplies" and "services" have the meaning given the terms in the Federal Acquisition Regulation.